

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Roy C. Burton,)	
)	
Petitioner,)	C.A. No.: 8:05-0358-MBS
)	
vs.)	
)	OPINION AND ORDER
South Carolina Department of)	
Corrections; and Henry McMaster,)	
Attorney General of South Carolina,)	
)	
Respondents.)	
)	

Petitioner Roy C. Burton is an inmate in custody of the South Carolina Department of Corrections. Petitioner, proceeding pro se, brought this action for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On May 4, 2005, Respondents filed a motion for summary judgment on the grounds that Petitioner has not yet exhausted his state remedies as required by § 2254(b)(1). By order filed May 5, 2005, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), Petitioner was advised of the summary judgment procedure and the possible consequences if he failed to respond adequately. Petitioner filed a document entitled “Objection and Motion for Summary Judgment” on June 3, 2005.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Bruce H. Hendricks for pretrial handling. The Magistrate Judge filed a Report of Magistrate Judge on November 15, 2005, in which she recommended that Respondents’ motion for summary judgment be granted and that the within § 2254 petition be dismissed without prejudice. Plaintiff filed no objections to the Report of Magistrate Judge.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of those portions of the Report of Magistrate Judge to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. See 28 U.S.C. § 636(b)(1). In the absence of objections to the Report and Recommendation, the court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

After a thorough review of the Report and Recommendation and the record in this case, it appears that Petitioner's application for post-conviction relief still is pending in state court. Accordingly, Petitioner has not yet exhausted his state remedies. The court adopts the Magistrate Judge's Report and incorporates it herein. Respondents' motion for summary judgment is granted to the extent Respondents asserted that Petitioner has not exhausted his state remedies. The habeas petition is dismissed without prejudice.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina
December 16, 2005

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.